

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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VALERIE GILLEN )

Plaintiff, )

v. )

04-CV-12517-GAO

CNA GROUP LIFE ASSURANCE COMPANY )

Defendant. )

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**MOTION TO STRIKE PLAINTIFF'S JURY DEMAND**

Defendant CNA Group Life Assurance Company hereby moves the Court to strike Plaintiff's jury demand pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. For the reasons set forth below, Plaintiff's jury demand should be stricken.

The sole claim in Plaintiff's Complaint is for long-term disability benefits under an employee welfare benefit plan covered under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132. Complaint P. 1, 6-7. Remedies sought under ERISA are equitable in nature -- even claims merely seeking plan benefits -- for which no jury trial is available. Stanford v. AT&T Corp., 927 F. Supp. 524, 527 (D. Mass. 1996); Fuller v. Connecticut General Life Ins. Co., 733 F. Supp. 462, 463 (D. Mass. 1990).

Although the First Circuit has yet to rule on the issue of whether a plan beneficiary is entitled to a jury trial, numerous Massachusetts District Courts have considered the matter and held that no such right exists. E.g. Turner v. Fallon Community Health Plan Inc., 953 F. Supp. 419, aff'd, 127 F. 3d 196 (1<sup>st</sup> Cir. 1997) (no entitlement to jury trial under §1132(a)(1)(b) ); Stanford v. AT&T Corp., 927 F. Supp. 524, 527 (D. Mass. 1996) (same); Fuller v. Connecticut General Life Ins. Co., 733 F. Supp. 462, 463 (D. Mass. 1990) (same); Jorstad v. Connecticut General Life Ins. Co., 844 F. Supp. 46, 48 (D. Mass. 1994) (same); Charlton Memorial Hospital v. Foxboro Co., 818 F. Supp. 456, 459 (D. Mass. 1993) (same).

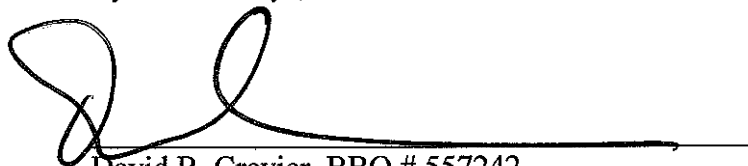
Furthermore, all of the federal appellate courts that have considered the matter have held that there is no right to a jury trial on ERISA claims. See, e.g., Katsaros v. Cody, 744 F.2d 270, 278 (2d. Cir.) (plaintiff not entitled to jury trial on claim for benefits), cert. denied, 469 U.S. 1072 (1984); Cox v. Keystone Carbon Co., 894 F.2d 647, 649-50 (3<sup>rd</sup> Cir.) (same), cert. denied, 498 U.S. 811 (1990); Borst v. Chevron Corp., 36 F.3d 1308 (5<sup>th</sup> Cir. 1994), cert. denied, 514 U.S. 1066 (1995) (same); Wardle v. Central States, S.E. and S.W. Areas Pension Funds, 627 F.2d 820 (7<sup>th</sup> Cir. 1980), cert. denied, 449 U.S. 1112 (1981) (same); Houghton v. SIPCO, Inc., 38 F.3d 953 (8<sup>th</sup> Cir. 1994) (same); Thomas v. Oregon Fruit Prods. Co., 228 F.3d 991 (9<sup>th</sup> Cir. 2000)(collecting cases); Zimmerman v. Sloss Equip., Inc., 72 F.3d 822 (10<sup>th</sup> Cir. 1995) (collecting cases); Blake v. Unionmutual Stock Life Inc. Co., 906 F.2d 1525 (11<sup>th</sup> Cir. 1990).

For these reasons, the Plaintiff respectfully requests that the Court strike Plaintiff's jury demand.

Respectfully Submitted,

Defendant CNA Group Life Assurance Company

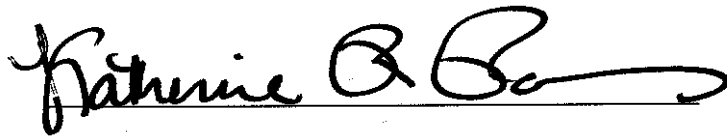
By its Attorneys,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served on Plaintiff's counsel by first class U.S. Mail, postage prepaid this 14<sup>th</sup> day of January, 2005.

A handwritten signature in black ink, appearing to read "Katherine B. Bo", written over a horizontal line.